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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTINE MARIE REYNOLDS,

Defendant and Appellant.

G056849

(Super. Ct. No. 14WF3283)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Patrick Donahue, Judge. Affirmed.

Allen G. Weinberg, under appointment by the Court of Appeal, for
Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant
Attorney General, Julie L. Garland, Assistant Attorney General, Daniel Rogers and
Christopher P. Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Christine Marie Reynolds appeals from an order denying her motion to strike a firearm enhancement in the interest of justice. She contends the denial constitutes an abuse of discretion, but we disagree and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant was convicted of first degree murder for fatally shooting her 96-year-old mother Gretchen. The shooting was preceded by many years of strife between appellant and her mother, but on the day it occurred, there was no palpable friction between them. While Gretchen was talking on the phone, appellant simply retrieved a gun from her car, walked up to her, and shot her in the forehead. Although appellant had been drinking before the shooting, the jury rejected her claim she accidentally killed Gretchen while trying to commit suicide.

At the time of the shooting, appellant was 71 years old. The trial court sentenced her to 25 years to life for the murder, plus a 25-year-to-life enhancement for causing death with a firearm pursuant to Penal Code section 12022.53, subdivision (d).¹ The court did not impose sentence on a second enhancement allegation the jury found true: that appellant personally used a firearm within the meaning of section 12022.5, subdivision (a). On appeal, we modified the judgment to reflect the fact appellant's sentence on the latter enhancement should have been imposed but stayed. In all other respects we affirmed. (See *People v. Reynolds* (June 26, 2017, G052948) [nonpub. opn.])

On the heels of our decision, the Legislature modified section 12022.53 by amending subdivision (h). Effective January 1, 2018, that subdivision states, "The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section." (§ 12022.53, subd. (h).)

¹

All further statutory references are to the Penal Code.

This amendment prompted appellant to move to strike her firearm enhancement under section 12022.53, subdivision (d). Appellant argued justice would be served by striking the enhancement because she “lived a crime free life for over 71 years. She is not a hardened criminal. She did not obtain a firearm to commit a crime. She was not a felon in possession. She is not a gang member. The fact that she was in legal possession of a firearm at the time she killed her mother does not make this crime more heinous that it would have been if she murdered her mother in a different manner. It is mere happenstance.” In opposing the motion, the prosecution argued the shooting was highly aggravated and carried out with extreme callousness. The prosecution also contended there was a glaring lack of mitigation that would justify a grant of leniency in this case.

At the motion hearing, the court acknowledged it had received two letters of recommendation on appellant’s behalf, as well as documentation pertaining to some self-help courses and A.A. classes appellant had completed in prison. The court then listened to a statement from appellant in which she accepted responsibility for murdering her mother. Appellant told the court, “There are no excuses. I knew I was an alcoholic. I knew that I blacked out. I didn’t know I was going to hurt anyone, but I should have had the foresight to know that something terrible could happen as it did.” Appellant said she is a better person now that she has stopped drinking and that she would like to have the opportunity to redeem herself in prison and have a chance for parole, even if that opportunity did not arise until she was in her 90’s.

The court advised appellant that pursuant to the Elderly Parole Program set forth in section 3055, she would have the right to a parole hearing after serving 25 years of her sentence. Appellant admitted she was aware of that program. However, she said, “I don’t know what the laws will be when I am . . . ninety-something. Or if it (apparently referring to her elder parole hearing) is even ever going to happen [There] is no way to know.” However, the court was confident appellant would benefit from the Elderly

Parole Program. It told her “it doesn’t really matter what I do on this [motion to strike] because – maybe to a slight degree. But you are going to see a parole board, no matter what, in your 90’s.”

Following that exchange, the court heard from two of appellant’s friends who spoke on her behalf. Then the court entertained argument from counsel about whether it should strike the firearm enhancement. After considerable back and forth on that issue, the court rendered its decision:

“[T]he test on this is pursuant to [section] 1385, whether it is in the interests of justice [to strike the firearm enhancement]. . . . [The enhancement applies when] someone is killed or suffers great bodily injury as a result of [a] gunshot. [¶] Here the gunshot was directly to [Gretchen’s] forehead. . . . The gunshot caused the death. [¶] The other thing that struck me . . . [is that appellant] never really showed any remorse at any time. [¶] Whether it was . . . after the shooting . . . [or] during the course of the trial . . . that struck me because it was [her own mother] that got killed. [¶] So based on the facts of the case and that, I am going to deny the motion to strike the [enhancement]. [¶] Like I said, it doesn’t really matter because . . . [i]n 25 years you will be eligible for parole [under the Elderly Parole Program]. . . . [¶] [My ruling is] not going to affect your ability to get [a] parole hearing when you are in your 90’s. [¶] . . . [¶] So [the] motion is denied. And the sentence remains.”

DISCUSSION

Appellant contends the trial court erred by refusing to strike the firearm enhancement. We cannot agree.

A trial court’s refusal to dismiss a firearm enhancement under section 1385 is reviewed for an abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 374-375; *People v. Pearson* (2019) 38 Cal.App.5th 112, 116.) Under that deferential standard, reversal is not required unless the defendant clearly shows the trial court’s

decision is so irrational and arbitrary that no reasonably-minded person could ever agree with it. (*Ibid.*)

Appellant is unable to make such a showing in this case. She contends the trial court put too much stock in the Elderly Parole Program and improperly delegated its sentencing authority to that program. So instead of making an honest evaluation of whether appellant was entitled to relief under section 1385, the court “kicked the proverbial can down the road by failing to impose what it recognized was a fair and just sentence simple because it assumed the Elderly Parole Program would cause the same outcome.” Appellant claims this is particularly troubling because there is no guarantee the program will still be in effect by the time she has served 25 years in prison.

Despite the trial judge’s repeated references to the Elderly Parole Program, he ultimately decided appellant’s motion based on the facts of the case and appellant’s lack of remorse in the wake of the shooting. The situation would be different if the judge had told appellant, “I’m going to deny your motion because you will be eligible for parole under the Elderly Parole Program when you are in your 90’s,” and said nothing else. But that is not what the judge did. Instead, he explicitly denied appellant’s motion due to the circumstances surrounding her crime.

Rather than using the Elderly Parole Program as the *basis* for his ruling, the trial judge brought it up to explain the *consequences* of his ruling, or more precisely the lack of consequences. The judge simply wanted to assure appellant her parole prospects are not going to be affected by his decision because, as it now stands, she will be eligible for an elder parole hearing after serving 25 years of her sentence. We recognize there is no guarantee the Elderly Parole Program will be around at that time, but that doesn’t matter because the judge did not premise his decision on that being the case. His references to the program do not undermine our belief he relied on legitimate considerations in making his ruling. (See *People v. Ramirez* (2019) 40 Cal.App.5th 305, 311-312 [trial court’s erroneous understanding that denial of motion to strike firearm

enhancement would not affect the defendant's parole eligibility date was immaterial since that was not why the motion was denied].)

Appellant also contends the trial judge adopted an overly-mechanized approach to her motion and denied it simply because she used a gun to cause the death of another human being. However, the judge's comments belie this claim. Besides mentioning the fact that appellant killed Gretchen with a gun, the judge also found it significant that appellant fired the gun directly into Gretchen's forehead and that she expressed no remorse in the wake of the shooting, even though Gretchen was her own mother. Clearly, the judge gave appellant's case individualized attention and made his ruling based on proper considerations.

Lastly, in supplemental briefing, appellant argues the trial judge abused his discretion by failing to consider whether the interests of justice warranted a reduction in the length of the firearm enhancement, as opposed to an outright dismissal. In so arguing, appellant relies on *People v. Morrison* (2019) 34 Cal.App.5th 217 (*Morrison*), which construed section 12022.53, subdivision (h) to give trial courts considerable discretion in handling a motion filed under that provision.

Morrison recognized that, besides the 25-year-to-life enhancement set forth in section 12022.53, subdivision (d) for causing death with a firearm, section 12022.53 also contains lesser included enhancements of 20 years for discharging a firearm, and 10 years for using a firearm, under subdivisions (c) and (b), respectively. (*Morrison, supra*, 34 Cal.App.5th at p. 221.) The court found it significant that in cases where the subdivision (d) enhancement is unsupported by substantial evidence or defective in some other respect the trial court could impose an uncharged enhancement under subdivision (b) or (c). (*Id.* at p. 222.) Given the trial court's authority in those situations, *Morrison* decided there was "no reason a court could not also impose one of these [lesser] enhancements after striking an enhancement under section 12022.53, subdivision (d), under section 1385." (*Id.* at pp. 222-223.) Thus, even though the subdivision (d)

enhancement was supported by substantial evidence and legally applicable in *Morrison*, the court held the trial court “had the discretion to impose [a 10- or 20-year] enhancement under section 12022.53, subdivision (b) or (c) as a middle ground to a lifetime enhancement under section 12022.53, subdivision (d), if such an outcome was found to be in the interests of justice under section 1385.” (*Id.* at p. 223.)

We respectfully disagree with this holding, as did the court in *People v. Tirado* (2019) 38 Cal.App.5th 637, review granted (*Tirado*). As the *Tirado* court pointed out, section 12022.53, subdivision (h) gives the trial court the discretion to ““strike”” or ““dismiss”” a firearm enhancement in the interest of justice under section 1385. (*Id.* at p. 643.) “This language indicates the court’s power pursuant to these sections is binary: the court can choose to dismiss a charge or enhancement in the interest of justice, or it can choose to take no action. There is nothing in either statute that conveys the power to change, modify, or substitute a charge or enhancement.” (*Id.* at p. 643.) *Tirado* was also concerned that implying such power would undermine the separation of powers doctrine by encroaching on the prosecution’s authority to determine what charges to file. (*Id.* at p. 644.) Therefore, it held that under section 12022.53, subdivision (h), the trial court’s authority is “limited to either imposing or striking” a firearm enhancement; the court does not have the power to impose punishment for a lesser included enhancement. (*Ibid.*)

We find *Tirado*’s analysis persuasive and adopt its holding here. For the reasons set forth in that opinion, the trial court did not abuse its discretion in failing to consider whether to sentence appellant for a lesser included enhancement in this case.

DISPOSITION

The trial court's order denying appellant's motion to strike her firearm enhancement in the interest of justice is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.